

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA, EASTERN DIVISION

DONALD FREEMAN

Plaintiff,

VS.

TERRY RAY MITCHELL., et al.,

Defendants.

CASE NO.: 3:08-cv-00104-WKW

## DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO REMAND

**COMES NOW**, the Defendants, Terry Ray Mitchell and Janice Mitchell d/b/a Mitchell Enterprise, by and through the undersigned counsel, and files their response to Plaintiff's Motion to Remand:

1. At this time, the Defendants concede that the Plaintiff was a resident of the State of Georgia at the time on the filing of the Summons and Complaint in this matter.
2. These Defendants reserve the right to contest said citizenship if any evidence is discovered in the course of this litigation that would refute the information provided by the Plaintiff in his Motion to Remand.
3. These Defendants now address the Plaintiff's demand that costs for the filing of his Motion to Remand be assessed against these defendants. (Plaintiff's Memorandum of Law in Support of Plaintiff's Motion to Remand, p. 5).
4. These Defendants request that the Plaintiff's request be denied as at the time of the filing of their Notice of Removal, the Plaintiff's Complaint was devoid of any citizenship information pertaining to the Plaintiff. The only citizenship described in the Plaintiff's Complaint was that of these Defendants, who are both citizens of Georgia.

5. The only information from which the Defendants could obtain the citizenship of the Plaintiff was from the Alabama Uniform Traffic Accident Report. Said report showed that the Plaintiff was a citizen of Alabama at the time of the accident, and no information was available to indicate otherwise.
6. As the only credible information available to these Defendants at the time of their filing of their Notice of Removal that the Plaintiff was a citizen of Alabama at the time of the filing of the Complaint.

**WHEREFORE, PREMISES CONSIDERED,** these Defendants respectfully request that this Honorable Court not tax any of the Plaintiff's costs and/or attorney's fees associated with the Plaintiff's Motion to Remand to the these Defendants.

Respectfully Submitted,

s/ K. Donald Simms

K. Donald Simms (ASB-9801-M63K)

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 31st day of March, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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s/ K. Donald Simms \_\_\_\_\_  
OF COUNSEL